

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 15-1083V

Filed: August 31, 2016

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REBECCA SWANICK on behalf of J.S. \*

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Special Master Gowen

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Petitioner, \*

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Syncopal Episode;

v. \*

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Flumist; Hepatitis A; Tetanus

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Diphtheria-acellular Pertussis;

SECRETARY OF HEALTH \*

\*

Menactra;

AND HUMAN SERVICES, \*

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Respondent. \*

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### **RULING ON ENTITLEMENT**<sup>1</sup>

**Gowen**, Special Master:

On September 28, 2015, Rebecca Swanick (“petitioner”) filed a petition on behalf of her minor child, J.S., for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act” or “Program”). The petition alleges that J.S. suffered a syncopal episode resulting in a fractured jaw and broken teeth, as a result of the administration of Flumist, Hepatitis A, Tetanus-Diphtheria-acellular-Pertussis, and Menactra vaccines on October 15, 2012. Petition at Preamble, ¶ 2, filed Sept. 28, 2015.

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<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned’s action in this case, the undersigned intends to post this ruling on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2012)). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b).

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

On August 31, 2016, respondent filed a Rule 4(c) report (“Respondent’s Report”), in which she concedes that petitioner is entitled to compensation in this case. Respondent’s Report at 1. Specifically, respondent “believes that J.S.’s syncopal event is related to the administration of one or more of the vaccines she received on October 15, 2012.” *Id.* at 3; *see* 42 U.S.C. §300aa-13(a)(1)(B). She adds that, “based on the medical records . . . J.S. suffered the residual effects of her condition for more than six months,” and therefore, “petitioner has satisfied all legal prerequisites for compensation under the Act.” Respondent’s Report at 3; *see* §300aa-11(c)(D)(ii).

In view of respondent’s concession, and the evidence before me, I find entitlement to compensation under the Vaccine Act. *See* 42 C.F.R. § 100.3(a), (b)(2). A separate decision on damages will issue.

**IT IS SO ORDERED.**

**s/ Thomas L. Gowen**

Thomas L. Gowen

Special Master